Wright discloses a dosage form comprising a first composition and a second composition. The first composition comprises a therapeutic agent and the second composition comprises an adverse-effect agent (paragraph [023]). The composition provides tamper resistance by releasing the adverse-effect agent if it is tampered with, *e.g.* chewed, crushed, ground or dissolved (paragraph [029]). In contrast, when the composition is taken orally as intended only the therapeutic agent is released. This is achieved by the use of specific coatings on the first and second compositions that render the first composition soluble in the stomach but the second composition insoluble (unless tampering occurs). This is explained fully at paragraph [028].

Paragraph [030] of Wright states that the first composition may be designed to provide slow release of the therapeutic agent to the patient. This may be achieved by using a sustained release coating (section 5.4.4) or by dispersing the therapeutic agent in a controlled release matrix (paragraph [082]). The discussion of the composition of the controlled release matrix starts at paragraph [084] and is relevant because it is within these passages that mention is made of the possible use of Eudragit NE 30 D, *i.e.* a neutral poly(ethyl acrylate, methyl methacrylate) copolymer.

Paragraphs [085-087] of Wright set out three classes of polymers that may be used in a controlled release matrix, namely (a) hydrophilic or hydrophobic polymers, (b) digestible, long chain hydrocarbons or (c) ploy alkylene glycols. Paragraph [088] then goes on to say that a suitable matrix comprises one or more cellulose ethers or acrylic resins, one or more aliphatic alcohols and/or one or more hydrogenated vegetable oils. Examples of acrylic resins are set out in paragraph [089] and one of the seven mentioned is Eudragit NE 30 D.

Wright also discloses at paragraph [084] that the therapeutic agent can be dispersed in the matrix using dry or wet granulation or by blending. Paragraph [092] elaborates further

and states that the controlled release matrix containing the therapeutic agent can be prepared using conventional techniques including melt granulation, wet granulation, dry blending, dry granulation or co-precipitation. There is no mention of melt extrusion.

Finally, paragraph [094] of Wright states that the first (and second) composition is a solid such as fine granules, pills, beads, capsules, tablets or powders.

Applicants submit that Wright does not anticipate independent claim 138 (or new independent claim 211) because there is simply no disclosure in Wright of a unit dose comprising melt extruded multiparticulates that comprise a neutral poly(ethyl acrylate, methyl methacrylate) copolymer. Rather, Wright discloses a first composition that *may* be in the form of granules and *may* contain Eudragit NE 30 D but which is prepared by melt granulation, wet granulation, dry blending, dry granulation or co-precipitation. There is no disclosure whatsoever of melt extrusion. Since every element of independent claim 138 is not disclosed in Wright, the reference can not anticipate claim 138 or any claim which is dependent upon claim 138.

Further, with respect to all of the claims, it is submitted that Wright is not an anticipatory reference because Wright's disclosure does not describe the presently claimed invention sufficiently to have placed a person of ordinary skill in the field in possession of the invention. *See, In re Spada,* 911 F.2d 705, 708 (Fed.Cir 1990).

Notably, Wright begins the discussion of controlled release matrices by stating that "[a]ny controlled-release matrix can be used in the oral dosage form of the invention" (paragraph [082]). The presently claimed novel combination of elements are certainly not disclosed together anywhere in Wright. Thus, to arrive at the presently claimed invention of claim 138, for example, the person of ordinary skill would have had to at least make each of the following selections from the disclosure of Wright:

1. decide to make the first composition a slow release composition (1 choice from 2);

2. decide to provide slow release by use of a matrix rather than a coating (1 choice from 2);

3. decide to use a class (a) polymer in the matrix (1 choice from 3);

4. decide to use an acrylic polymer in the matrix (1 choice from 10);

5. decide to use Eudragit NE 30 D as the acrylic polymer (1 choice from 7);

6. decide to formulate the first composition as granules or fine granules (2 choices from 7); and

7. decide to prepare the first composition by melt extrusion (not disclosed).

Hence to arrive at the unit dose or claim 138 from Wright, the person of ordinary skill would have had to choose 2 of 5,880 possible unit doses disclosed by the various lists therein. A similar analysis applies to independent claim 165, as well as new independent claims 211 and 236. The very broad disclosure of Wright cannot qualify as an anticipatory disclosure of the present claims under 35 U.S.C. § 102(b). "[A]lthough specific claims are subsumed in [a prior art reference's] generalized disclosure …, this is not literal identity" required for anticipation. *See, Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559 (Fed. Cir 1992). Similar to the *Minnesota Mining* case, the cited reference's ranges were "so broad as to be meaningless" and provided no guidance on how to construct a product with the claimed invention's beneficial properties.

This is particularly the case here as there was no motivation or rationale for the person of ordinary skill to have made the necessary choices from the disclosure of Wright to arrive at

the presently claimed invention. In particular, there is no indication given in Wright that Eudragit NE 30 D is a particularly preferred polymer. Additionally, in the specific examples provided in Wright, a neutral poly(ethyl acrylate, methyl methacrylate) copolymer is never used.

Applicants therefore submit that the present claims are not anticipated by Wright, and withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

Rejection Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 138-140, 142-162 and 164-189 under 35 U.S.C. § 103(a) as being unpatentable over Wright in view of Oshlack et al. U.S. Patent No. 5,958,452 and Oshlack et al. U.S. Patent Application Pub. No. 2002/0010127. Applicants respectfully traverse.

As discussed at pages 12-13 of the February 3, 2010 Response, and shown in the Figures and Examples of the present Specification as well as Exhibit A submitted with the February 3, 2010 Response, the presently claimed invention primarily provides tamper resistance such that doses are resistant to abuse by grinding or crushing followed by solvent extraction and/or direct solvent extraction. The present invention also provides such tamper resistance in a controlled release matrix. This combination of properties is achieved by the inclusion of a neutral poly(ethyl acrylate, methyl methacrylate) copolymer as a controlled release matrix component in the claimed unit doses, granulates, multiparticulates and formulations. Such products exhibit rubber-like characteristics, which in turn, provide tamper resistance, *i.e.*, resistance to abuse by grinding/crushing followed by solvent

extraction/direct solvent extraction in order to access the active agent. It is submitted that the test results set forth in the present Specification and Examples, as well as Exhibit A, provide strong evidence that it is the presence of Eudragit NE 30 D, a neutral poly(ethyl acrylate, methyl methacrylate) copolymer, in the claimed invention which provides the advantageous feature of tamper resistance. The tamper resistance of the present invention significantly diminishes the likelihood that a person seeking to abuse the dosage form by grinding/crushing followed by solvent extraction and/or direct solvent extraction would be able to obtain a sufficient amount of the active agent from the dosage form to abuse.

In contrast thereto, Wright seeks to obtain a totally different kind of tamper resistance. Specifically, Wright does not aim to make its dosage forms more resistant to crushing, grinding or extraction, rather it aims to prevent a user from achieving a euphorigenic or pleasing effect if a dosage form is administered after crushing, grinding or dissolving. As discussed in detail in paragraph [028] of Wright, this is achieved by including an adverse-effect agent in its dosage form which is released only if the dosage form is tampered with.

The objective and main benefit of the present invention and Wright are therefore entirely different. Correspondingly, Wright does not contain any teaching or suggestion whatsoever as to how to produce unit doses, granulates, multiparticulates or formulations that have improved resistance to abuse by grinding or crushing followed by solvent extraction and/or direct solvent extraction. Certainly, Wright does not contain any teaching that these properties are provided by the inclusion of a neutral poly(ethyl acrylate, methyl methacrylate) copolymer in the matrix. Rather, as discussed above with respect to the anticipation rejection, Wright only mentions the possible use of Eudragit NE 30 D in passing among a multitude of possible matrix components. Wright does not mention Eudragit NE 30 D in connection with any tamper resistance properties. In fact, Wright explicitly states that "*[a]ny*

controlled-release matrix can be used in the oral dosage form of the invention" (paragraph [082]). Moreover, none of the Examples of Wright utilize a neutral poly(ethyl acrylate, methyl methacrylate) copolymer. A prior art reference such as Wright which discloses a "vast number" of possibilities and provides examples which are different from the presently claimed invention does not provide the requisite motivation or rationale to select a neutral poly(ethyl acrylate, methyl methacrylate) copolymer for inclusion in the matrix. *See, In re Baird,* 16 F3d. 380 (Fed.Cir. 1994).

It is therefore submitted that a person of ordinary skill would not have deduced the presently claimed invention from the general disclosure of Wright regarding various possible matrix ingredients. Further, neither the cited Oshlack patent nor the cited Oshlack application provide any motivation or rationale for selecting a neutral poly(ethyl acrylate, methyl methacrylate) copolymer for inclusion in a unit dose, granulate, multiparticulate or formulation as presently claimed. Accordingly, it is submitted that the presently claimed invention would not have been rendered obvious by the cited references, and withdrawal of the obviousness rejection is respectfully requested.

Conclusion

In light of the above amendments and remarks, Applicant respectfully requests that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney at (516) 874-4250, if a telephone call could help resolve any remaining items.

Respectfully submitted,

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